CF0000062795

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.(M.P.)

Cri.Appeal No.2059 /99

(APPEAL U/S 374(2) OF THE CODE OF CRIMINAL PROCEDURE)

APPELLANT (In Jail) : Muchaki Jaggu s/o Muchaki Kosa, aged about 49 years, occupation, Agriculturist, r/o Gram Shayamgiri, P.S.Kunwakorda, Distt.Dantewara.

Versus

RESPONDENT: : The State of M.P. through police station Amrakchi Kendra, Ku-wakonda, Distt.Dantewara, (M.P.)

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आदेश पत्रक

मामला क्रमांक Criminal Appeal No. 2059/99 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon'ble Shri Justice L.C.Bhadoo, &
Hon'ble Shri Justice V.K. Shrivastava,JJ.

05/09/2006

Shri D.R. Sharma, Sr. Advocate with Shri B.D. Badgainya, Counsel for the appellant.

Shri Akhil Agrawal, Panel Lawyer for the State.

Oral judgment.

This appeal is directed against the judgment of conviction and order of sentence dated 05/05/1999 passed by the Sessions Judge, Jagdalpur, in Sessions Trial No. 325/98 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC, convicted and sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that the deceased Sodi Hidma had borrowed Rs.100/- from the accused. On the fateful i.e., 01/08/1998 accused came to the deceased and demanded Rs.100/- which he advanced to the deceased, but the deceased did not return the money on which the accused abused the deceased and threatened him that he will be murdered. Thereafter, the family members of the deceased went to the forest leaving behind the deceased and daughter-in-law namely Sodi Mangli (PW/2). At about 11.00 a.m. the accused returned from his house with a bow and arrow to the house of the deceased. When

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the deceased was sleeping in his room, he stabbed the deceased with an arrow on his face and also attacked with the axe on the parietal region of the deceased, as a result of which he received injuries on the face, jaw and parietal region. PW/2 Sodi Mangli witnessed the crime who informed about the incident to PW/1 Sodi Chamru and PW/3 Sodi Hingo @ Bhusaam and in turn, PW/1 Sodi Chamru went to the Police Station at Kuwakonda and lodged report (Ex.P/4). On receiving this report Station House Officer, Kuwakonda, registered the case under Section 302 of the IPC and took up the investigation. He reached the place of occurrence. After giving notice to the Panchas he prepared Panchnama of the body of Sodi Hidma (PW/1).

The Investigation Officer took into possession the blood stained soil and plain soil from the place of occurrence along with one cotton Chadar under Ex.P/2. The accused while in the police custody gave a memorandum Ex.P/5 regarding the axe and arrow, the weapon of the offence and in pursuance of that, he got recovered the axe and arrow with bow under Ex.P/6. The merg intimation was also given vide Ex.P/7. The dead body of Sodi Hidma (PW/1) was sent for postmortem examination to the Primary Health Centre, Kuwakonda under Ex.P/8 where Doctor R.A. Khan (PW/6) conducted the postmortem and prepared the postmortem report (Ex.P/13) in which he opined that the death was due to shock on account of fracture of zygomatic bone (head injury) and same was homicidal in nature.

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After completion of the investigation, charge-sheet was filed in the Court of Chief Judicial Magistrate, Dantewara, who in turn committed the case to the Sessions Judge from where he received the case for trial.

The prosecution in order to establish the charge against accused examined six witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C., in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent.

Learned Sessions Judge, after hearing the arguments of learned counsel for the parties, convicted and sentenced the accused as mentioned in para one of this judgment.

We have heard learned counsel for the parties, perused the judgment of the trial Court and evidence available on record.

The fact of homicidal death of Sodi Hidma has not been disputed by learned counsel for the appellant. Apart from that, eye-witness PW/2 Sodi Mangli, daughter-in-law of the deceased has categorically stated that the accused assaulted the deceased with axe and arrow, as a result of which he received injuries on the head. She persuaded the accused not to attack the deceased, but even then the accused did not stop and after inflicting the injuries the accused fled away from the scene of occurrence. The evidence of this witness has been corroborated by the medical evidence of Dr. R.A. Khan (PW/6), who has categorically stated that there was stab wound on right cheek, another stab wound on right cheek

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and there was an injury on the right temporal region in the size of 5" x 5" and the blood was oozing from the ear. All the above mentioned injuries were ante-mortem and the death is homicidal in nature. The cause of death was due to shock caused by fracture of zygomatic bone (head injury). Therefore, it is established that the death of deceased was homicidal in nature.

Now, coming to the involvement of the accused/appellant in crime in question, learned counsel for the accused/appellant argued that being relative of the deceased PW/2 Sodi Mangli was interested witness and more-over, she did not raise any cry, therefore, her evidence does not inspire confidence.

On the other hand, Shri Akhil Mishra, Panel Lawyer for the State supported the judgment of the trial Court.

It is true that the whole case rests on the evidence of PW/2 Sodi Mangli who was the sole eye-witness to the incident and no doubt, she is daughter-in-law of deceased – Sodi Hidma. On this point law is well settled that the evidence of relative witness cannot be thrown away only on the ground that witness is related to the deceased. When the witness is relative of the deceased, the Court has to scrutinize the evidence of such witness with care and circumspection in order to ascertain the veracity of the evidence of such witness.

In the light of the above principle, if we look into the evidence of PW/2 - Sodi Mangli, she has stated that in the

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morning, the accused came to their house and demanded money from Sodi Hidma which was advanced to Sodi Hidma by the accused, but Sodi Hidma did not return the money, on which some altercation took place between the two. The accused left for his house and again came at about 12.00 noon with axe, bow and arrow, at that time, Sodi Hidma was sleeping in his room, Sodi Chamru and Sodi Hingo @ Bhusaam had already left for the forest for brining the wood. Her husband and wife of Sodi Hidma had gone to market. She was all alone in the house, the accused came, stabbed the deceased with arrow and attacked with axe on the head of the deceased. She witnessed the occurrence when the accused was attacking the deceased with arrow and axe and thereafter he fled away from the scene of occurrence. She persuaded the accused not to assault the deceased, but after assaulting, he fled away from the scene of occurrence. Sodi Hidma succumbed to the injuries. When her husband returned from the market, she informed him about the incident. In the cross-examination of this witness, defence has not been able to bring on record any circumstance which makes the evidence of this witness unreliable or untrustworthy. The presence of this witness at the time of occurrence in her house is natural and in the cross-examination, nothing has been brought on record which shows that her presence at the time of crime in question was doubtful.

Moreover, PW/1 - Sodi Chamru has stated that he along with his wife went to the market and when they returned in the

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noon, they saw that the deceased was lying on the ground and there were injuries on the head and mouth. PW/2 – Sodi Mangli informed him that the accused came and attacked the deceased with the axe and arrow. He immediately informed village Sarpanch Kuhrami Gaagru (PW/4), and thereafter, Panchayat was convened in which the accused was also called and he made extra judicial confession that he attacked the deceased with axe and arrow. Thereafter, he lodged the report (Ex.P/4) in the Police Station. PW/3 Sodi Hingo @ Bhusaam has stated that Sodi Mangli (PW/2) informed him about the incident and when he came back to the residence he saw the injuries on the body of Sodi Hidma. PW/4, Kuhrami Gaagru, who was a Sarpanch of village Panchayat, has stated that on the fateful day Sodi Hingo came to his house and informed about the incident that the accused murdered Sodi Hidma with the axe, thereafter he left to the house of Sodi Hidma where he saw the body and injuries on his cheek and parietal region. Police came in the village and on enquiry the accused gave a memorandum (Ex.P/5) about the axe and arrow and in pursuance of that, axe and arrow were recovered at the instance of accused under Ex.P/6.

PW/5 Shri R.K. Verma, Investigating Officer has stated that the accused while in police custody gave a memorandum (Ex.P/5) regarding the place where he kept the axe, bow and arrow and in pursuance of that, he got recovered the same under Ex.P/6, therefore, the evidence of PW/2 Sodi Mangli stands corroborated

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by the other evidence of this witness in material particulars. The weapon of the offence i.e. bow, arrow and axe were also recovered at the instance of accused, as such, we do not find any merit in the arguments of learned counsel for the appellant.

As far as the second argument advanced by learned counsel for the appellant that PW/2 Sodi Mangli had not raised cries is concerned, perusal of the evidence of PW/2 shows that she has stated that she persuaded the accused not to attack the deceased, but after attacking he fled away from the scene of occurrence and as per the evidence she had immediately informed about the incident to her husband, therefore, we do not find any substance in the arguments advanced by learned counsel for the appellant.

For the foregoing reasons and in view of the above circumstances, we do not find any reason to interfere with the findings of the trial Court, same is based on legal evidence and the accused has rightly been convicted for the commission of offence under Section 302 of the IPC.

The appeal fails and same is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K.Shrivastava
Judge

Raju

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13.9.06